



POLICE DEPARTMENT CITY OF NEW YORK

July 28, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Corey Carr
Tax Registry No. 926651
Manhattan Court Section
Disciplinary Case No. 2015-14542

Charges and Specifications:

1. Said Police Officer Corey Carr, while assigned to the 46th Precinct, on or about October 23, 2015, while on-duty, having been directed by New York City Police Sergeant Jorge Carvajal, Tax No. 932427, to take an assigned foot post, did fail and neglect to comply with said order.

P.G. 203-03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED
CONDUCT

Appearances:

For the Department: Jessica Brenes, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, New York 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street-Suite 640
New York, New York 10038

Hearing Dates:

April 6, and June 9, 2016

Decision:

Respondent is found Guilty

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on April 6, 2016 and June 9, 2016. Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. The Assistant Department Advocate called Sergeant Jorge Carvajal and Police Officer Eugene Gagliano as witnesses on the Department's direct case and Sergeant Erica Lloyd as a rebuttal witness regarding Respondent's testimony at this trial. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

It is not disputed that on October 21, 2015 and on October 23, 2015, Respondent was on duty, assigned to the 46 Precinct, and that his scheduled assignment regarding both of those tours of duty was a fixed foot post in front of [REDACTED]

Sergeant Erica Lloyd testified that on October 21, 2015, she visited the fixed foot post at [REDACTED]. When she observed that Respondent and his partner, Police Officer Jennings, were standing across the street from [REDACTED] she told them that their foot post was directly in front of the [REDACTED]. Lloyd testified that when Respondent then told her that he was not going across the street to stand in front of the [REDACTED], she told him that the reason that the post was directly in front of the [REDACTED] was so that the officer assigned to the post could deter criminal activity from taking place right in front of the store and could also look into the store to see if any criminal activity was taking place inside the [REDACTED]

Sergeant Jorge Carvajal testified that on October 23, 2015, prior to the commencement of roll call, he approached Police Officer Eugene Gagliano, who serves as a Patrolmen's

Benevolent Association (PBA) delegate for police officers assigned to the 46 Precinct. Carvajal had learned from Lloyd that Respondent had a problem with his fixed post and had been standing across the street from the post. Since Respondent's assignment that day was the same assignment that he had on October 21, 2015, Carvajal approached Gagliano because he wanted to see if Respondent was going to accept his assignment. Gagliano offered to speak to Respondent. Shortly thereafter, Gagliano told Carvajal that he had spoken to Respondent about his assignment for that day.

Carvajal then entered the muster room and called to Respondent to come over to him. As Respondent walked over to him he saw that Respondent was carrying his shield, his on-duty firearm and his off-duty firearm in his hands. Respondent handed him these three items and told him, "Here." Carvajal asked Respondent, "What are you doing?" Carvajal then brought Respondent inside the Domestic Violence Office where only Gagliano was present. Carvajal again asked Respondent, "What are you doing?" Respondent replied, "I'm not doing this. I can't do this." Respondent told Carvajal that he could not stand in front of the [REDACTED] because "they're selling drugs there." Carvajal told Respondent, "You realize what's going to happen here...this is the post you have been given. It's in front of the store. You're telling me that you are refusing this assignment." Respondent then stated, "Yeah, I understand. You are just doing your job."

Carvajal told Respondent that he had to notify the Commanding Officer (CO) that Respondent had refused an assignment and was being suspended. Respondent requested permission to take off his gun belt and his bullet-proof vest. Carvajal told Respondent, "Go ahead." Carvajal informed Lieutenant John Lewis that because Respondent had refused an assignment he was being suspended. Lewis then notified the CO.

Carvajal agreed that Respondent was permitted to move around in front of the [REDACTED] and that he would not have been off of his post if he merely walked on the sidewalk in front of the [REDACTED] to the side of the [REDACTED]. Carvajal recalled that the special projects lieutenant for the 46 Precinct had instructed him to assign Respondent to the foot post in front of [REDACTED] on October 23, 2015. Carvajal confirmed that another supervisor had Respondent sent to [REDACTED]. [REDACTED] Carvajal confirmed that the boundaries of the foot post in front of [REDACTED] are not contained in any document or on any map but that officers assigned to the 46 Precinct have been frequently verbally instructed that this fixed post is in front of the bodega not across the street. Carvajal agreed that he suspended Respondent before Respondent had the opportunity to take his post in front of [REDACTED] on October 23, 2015. Carvajal confirmed that Respondent told him that he wanted to perform his post from across the street.

Police Officer Gagliano recalled that on the morning of October 23, 2015, Carvajal stated that Respondent was being assigned to the foot post in front of [REDACTED] and that if Respondent did not take this post he would be suspended. Gagliano immediately met privately with Respondent and told him what Carvajal had said. Respondent replied, "No." Gagliano then asked Respondent if he wanted to think about it or change his mind. Respondent again replied, "No." Gagliano explained that he had asked Respondent this because he wanted to see if he could prevent Respondent from being suspended by Carvajal.

Respondent testified that before roll call on the morning of October 23, 2015, Gagliano told him that he was being assigned that day to the foot post at [REDACTED], that the sergeant would be asking him questions about the post, and that if he told the sergeant that he

was going to stand across the street or move from that location, he would be suspended. Carvajal soon approached him and told him that he had to ask him some questions and depending on how he answered the questions, Carvajal had been ordered by the CO to suspend him on the spot. Carvajal then asked him, "If I were to send you out there, where are you going to stand?" Respondent testified that he answered that he had no issue with going to the post "but if I feel tactically I need to cross the street, I'm going to cross the street." Carvajal then told him, "As per the CO, I'm suspending you." Respondent testified that he said nothing more and just walked away from Carvajal.

A few hours later, the CO asked him what had happened and he told the CO "about the post issue, about why I would like [to] go across the street if I felt tactically it made sense to cross the street." Respondent testified that when he had been assigned to this fixed post on previous occasions, he had gone across the street if he "needed to cross the street to deal with a situation."

Analysis

The section of the Patrol Guide which delineates the "Duties and Responsibilities" of a police officer mandates that officers "[p]erform duty in uniform as indicated on roll call or as directed by competent authority."¹ On the 46 Precinct roll call for October 23, 2015, Respondent was assigned to the same foot post that he had been assigned to on October 21, 2015.

I credit Sergeant Lloyd's testimony that when she observed Respondent standing across the street from the bodega on October 21, 2015, she reminded him that his post was to stand directly in front of the bodega and that Respondent then told her, "I'm not going in front of the

¹ Patrol Guide Procedure No. 202-21(1).

store." Lloyd's warning placed Respondent on clear notice that if he stood across the street from the bodega he would be off of his post.

Moreover, Respondent admitted that before roll call on the morning of October 23, 2015, Gagliano, his PBA delegate, told him that he was again being assigned to the foot post in front of [REDACTED] and warned him that if he told the sergeant that he was going to stand across the street or move from that location he would be suspended.

Despite these two warnings, Respondent admitted that when Sergeant Carvajal approached him inside the stationhouse before roll call and told him his fixed post that day was to stand in front of the bodega, he refused to make an unequivocal commitment to Sergeant Carvajal that he would only stand in front of the bodega. Respondent admitted that he told Carvajal, "If I feel tactically I need to cross the street, I'm going to cross the street."

Respondent's attorney argued that Respondent should not be found guilty of having failed to comply with an order to take an assigned post on October 23, 2015, because he never specifically told Carvajal that he would not go to his assigned post and because he was suspended before he was given the opportunity to take his post and comply with the order as to how he was to perform his post. However, the record establishes that Respondent was not suspended prematurely because he told Gagliano that he would not take the post and because he handed Carvajal his firearm before Carvajal suspended him.

I credit the testimony of Gagliano, Respondent's PBA delegate, that after he told Respondent "that Sergeant Carvajal said if he didn't take his post he would be suspended," Respondent replied, "No." (Tr. p. 72) Also, at his official Department interview, Respondent stated that Carvajal had told him, "You understand the CO has instructed me to suspend you on the spot if you do not stand directly in front of the store." When his interviewer then asked him,

“What did you do then?” Respondent answered, “And that’s when I gave him—I am going to be suspended, so I gave him...my firearm.” (Tr. p. 103-104) Respondent’s statement at his official Department interview that he handed Carvajal his firearm before Carvajal had actually suspended him corroborates Carvajal’s testimony that Respondent handed over his firearm before he was suspended. Since a police officer performing patrol duty in uniform is required to carry his or her firearm,² by handing Carvajal his firearm inside the stationhouse without having been ordered to do so, Respondent insured that he would not be able to take his assigned post.

As to Respondent’s attorney’s argument that Carvajal acted too quickly in suspending Respondent, I credit the testimony of Gagliano that after he warned Respondent that Carvajal would be asking him questions and that depending on his answers to those questions he might be suspended, he asked Respondent if he wanted to change his mind or if he wanted more time to think about what he was doing. It is clear that Gagliano was trying to attempt to prevent Respondent from being immediately suspended and that if Respondent had answered either of Gagliano’s questions in the affirmative, Gagliano would have communicated to Carvajal that Respondent had changed his mind or wanted time to think about what he should say to Carvajal. By simply telling Gagliano “No,” and then walking away from Gagliano (Tr. p. 72-73), Respondent chose to ignore the advice of his PBA delegate who was trying to help him.

Finally, Respondent’s admission that he had never had any problems or issues with Carvajal before October 23, 2015, and the fact that Respondent’s CO personally met with him twice that day, indicate that Respondent’s supervisors were not out to get him and that they were simply seeking a commitment from him that he would perform his assigned fixed foot post in the manner that he had been directed to perform it. Since the Department is a paramilitary

² Patrol Guide Procedure No. 204-09, “Required Firearms/Equipment.”

organization, it is imperative that uniformed members of the service perform their duties within the parameters of their assigned posts and that they comply with the specific directions of supervisors regarding how they are to perform assigned foot posts.

Respondent is found Guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on September 29, 2000. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached Confidential Memorandum. Respondent has no formal disciplinary record.

The Assistant Department Advocate (the Advocate) recommended that Respondent forfeit the 30 days he served on pre-trial suspension as a penalty. The Advocate did not cite any previous disciplinary decisions to support this penalty recommendation.

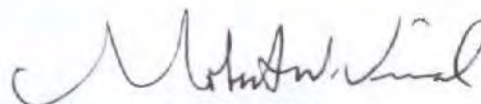
In *Case No. 2012-7525* (March 26, 2013), a 23-year police officer who had no prior disciplinary record forfeited the 30 days he had served on pre-trial suspension as a penalty for refusing to take a post inside a hospital to guard a hospitalized prisoner after he was directed to do so by a supervisor.

Respondent was suspended from October 23, 2015 until November 23, 2015, when he was placed on modified assignment. It is recommended that Respondent forfeit the 30 days he served on pre-trial suspension as a penalty.

Respectfully submitted,

APPROVED

SEP 13 2016
William J. Bratton
WILLIAM J. BRATTON
POLICE COMMISSIONER



Robert W. Vinal
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER COREY CARR
TAX REGISTRY NO. 926651
DISCIPLINARY CASE NO. 2015-14542

Respondent received an overall rating of 3.5 on his 2015 annual evaluation, 3.5 on his 2014 evaluation, and 4.0 on his 2013 evaluation. He has been awarded two Excellent Police Duty medals. He has no formal disciplinary record.

[REDACTED]

On March 23, 2016, he was placed in Level I discipline monitoring based on his overall record. This monitoring is continuing.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials